

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:

Track Three Cases

MDL No. 2804
Case No. 17-md-2804
Judge Dan Aaron Polster

**CERTAIN DEFENDANTS' DAUBERT MOTION TO EXCLUDE THE OPINIONS
OFFERED BY JAMES RAFALSKI**

Defendants Giant Eagle, Inc. and HBC Service Company, Rite Aid,¹ and Walmart Inc. ("Moving Defendants") hereby move to exclude the opinions offered by James Rafalski as to Moving Defendants under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and its progeny. As described more fully in the accompanying memorandum, Rafalski's opinions as to Moving Defendants are inadmissible legal opinions, unreliable, and would be unhelpful to the jury. Accordingly, Rafalski's opinions should be excluded in their entirety as to Moving Defendants.

Dated: July 23, 2021

Respectfully submitted,

/s/ Scott D. Livingston

Robert M. Barnes
Scott D. Livingston
Joshua A. Kobrin
MARCUS & SHAPIRA LLP
35th Floor, One Oxford Centre 301 Grant Street
Pittsburgh, PA 15219
Phone: (412) 471-3490
Email: rbarnes@marcus-shapira.com
Email: livingston@marcus-shapira.com
Email: kobrin@marcus-shapira.com

¹ Rite Aid Hdqtrs. Corp., Rite Aid of Ohio, Inc., Rite Aid of Maryland, Inc., d/b/a Rite Aid Mid-Atlantic Customer Support Center and Eckerd Corp. d/b/a Rite Aid Liverpool Distribution Center.

Attorneys for Giant Eagle and HBC Service Company

/s/ Tara A. Fumerton (consent)

Tara A. Fumerton
Tina M. Tabacchi
JONES DAY
77 West Wacker
Chicago, IL 60601
Phone: (312) 269-4335
Fax: (312) 782-8585
E-mail: tmtabacchi@jonesday.com
E-mail: tfumerton@jonesday.com

Attorneys for Walmart Inc.

/s/ Kelly A. Moore (consent)

Kelly A. Moore
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
Phone: (212) 309-6612
Fax: (212) 309-6001
E-mail: kelly.moore@morganlewis.com

/s/ Elisa P. McEnroe (consent)

MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Phone: (215) 963-5917
Email: elisa.mcenroe@morganlewis.com

Attorneys for Rite Aid Hdqtrs. Corp., Rite Aid of Ohio, Inc., Rite Aid of Maryland, Inc. d/b/a Rite Aid Mid-Atlantic Customer Support Center and Eckerd Corp. d/b/a Rite Aid Liverpool Distribution Center

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record on July 23, 2021.

/s/ Scott D. Livingston